



Commissioners

John Creighton
Chair and President
Bill Bryant
Patricia Davis
Lloyd Hara
Gael Tarleton

Tay Yoshitani
Chief Executive Officer

P.O. Box 1209
Seattle, Washington 98111
www.portseattle.org
206.728.3000

An audio of the meeting proceedings and meeting materials are available on the Port of Seattle web site -

<http://www.portseattle.org/about/organization/commission/commission.shtml>

(The approximate point in the audio recording for the specific item is identified by minutes and seconds; example: 01:30 Note: there are 2 audio parts for this meeting.)

**APPROVED MINUTES
COMMISSION SPECIAL MEETING DECEMBER 9, 2008**

The Port of Seattle Commission met in a special meeting at 12:00 p.m., Tuesday, December 9, 2008 in the Commission Chambers at Pier 69, 2711 Alaskan Way, Seattle, WA. Commissioners Bryant, Creighton, Davis, Hara and Tarleton were present.

1. CALL TO ORDER

The regular meeting was called to order at 12:00 p.m. by John Creighton, Commission President.

2. EXECUTIVE SESSION pursuant to RCW 42.30.110

The regular meeting was immediately recessed to an executive session to discuss Legal Risk and Public Contract matters for approximately ninety minutes and reconvened to public session.

PLEDGE OF ALLEGIANCE

Policy and Staff Briefing Item 6a was advanced on the agenda as follows:

6. POLICY AND STAFF BRIEFINGS

a. (00:01:27 – Audio, part 1) Briefing on Special Investigative Report

Presenter: Former U.S. Attorney Mike McKay

In opening remarks, Commission President Creighton stated that the report being presented was done at the behest of the Commission in response to the performance audit performed by the State Auditor's Office, indicating that the Port was susceptible to fraud.

Commissioner Creighton then turned the agenda over to the special investigative committee (committee), composed of Commissioners Bryant and Tarleton, and also included Mr. Mike McKay, who was selected earlier in the year to participate in the investigation. Comments about the creation of the Investigative Committee and the report were made by both Commissioners Bryant and Tarleton prior to Mr. McKay's presentation.

Mr. McKay was then introduced for his portion of the presentation, which included details of the Executive Summary and the 'Report of The Special Investigative Team.' A copy of the Executive Summary, along with a copy of the full Report, dated December 3, 2008, is by reference, made a part of these minutes. The documents are marked collectively as Exhibit '[A](#),' and are on file in Port office.

Mr. McKay noted that as a result of the investigation, there was evidence found of civil, but not criminal fraud. He also responded to Commission comments and questions of concern which included the areas of the splitting of contracts; issues of a cultural nature in dealing with compliance; the possibility of a recovery of funds to the Port; and the possibility of pursuance by the Department of Justice of criminal fraud if found.

(00:33:55 – Audio, part 1) CEO Yoshitani then reviewed his proposed response to the findings in report, commenting on disciplinary actions which had been taken. He spoke of an action plan which would require Port Construction Services staff members which handle small works contracts to attend training on federal, state and port contracting procedures, and would be required to complete an exam on their knowledge of the procedures.

Mr Yoshitani noted that the Port's ethics policy would be reviewed and revised as necessary. All Port employees would be required within the first 90 days of 2009 to review and certify their knowledge of Port compliance policies in order to be eligible for the annual performance review.

Mr. Yoshitani stated that if new information is learned as a result of the ongoing Department of Justice investigation, or other regular audits, he would consider taking further disciplinary actions as necessary.

In response to Commission question of whether or not Mr. McKay believed that Mr. Yoshitani's disciplinary actions and planned actions for the future were appropriate, he confirmed that he believed they were.

(01:00:52) Prior to public comment regarding the Special Investigative Report, Commissioner Hara read the following [motion](#) into the record:

“The Port of Seattle Commission:

- (1) Endorses all recommendations contained in the Investigative Report and directs the Chief Executive Officer to implement them immediately. Progress reports shall be presented to the Commission in public session every two weeks.

The Port of Seattle Commission Hereby Directs Port Staff To:

- (1) Continue to cooperate with the U.S. Department of Justice on its ongoing federal investigation, and to consult and cooperated with the Washington State Attorney General’s Office and the King County Prosecutor’s Office regarding the possibility of legal action against the former employees and/or contractors of the Port identified in the Investigation Report as having committed and/or benefited from fraud and other actions contrary to state law with respect to Port projects, in order to recover for damages sustained by the Port as the result of such actions; and
- (2) Research and recommend to the Commission as expeditiously as possible what measures the Port can take against contractors and other third parties identified in the Investigative Report which were (i) a part to fraudulent activities at the Port, or (ii) refused to cooperate as required by the audit clause in their contracts.

The Port of Seattle Commission Hereby Directs The Internal Auditor To:

- (1) Prepare a 2009 Work Plan to audit all currently active contracts and leases involving the firms named in the Investigative Report that did not cooperate or only cooperated partially with the investigation, and report to the Audit Committee with findings regarding their performance and compliance with all laws and policies.

Public comment regarding Item 6a was received from the following individuals:

- Chris Gower
- Peter Phillips, Seattle Marine Business Coalition
- Lise Kenworthy
- Eddie Rye, Jr., Community Coalition for Contracts and Jobs

Motion as read into the record carried by the following vote:

In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)

3. APPROVAL OF MINUTES

None.

4. SPECIAL ORDER OF BUSINESS

None.

5. (01:18:03 – Audio, part 1) UNANIMOUS CONSENT CALENDAR

The following items were placed for consideration on the Unanimous Consent Calendar:

- a. Request for approval of Claims and Obligations for the period of November 1 through November 30, 2008.**
- b. Request for authorization to execute a Conditional Consent of Assignment and Third Amendment to lease with Volcano, Inc., a Washington Corporation at Bell Street Pier, to HKMK, LLC.**

Request document: Commission agenda [memorandum](#) dated December 3, 2008 from Melinda Miller, Director, Portfolio Management and Patricia Spangler, Real Estate Manager

- c. Request for authorization to execute an Extension Agreement with Teamsters Local 117, representing Credential Specialists.**

Request document: Commission agenda [memorandum](#) dated November 19, 2008 from Gary Schmitt, Director, Labor Relations

- d. Request for authorization to execute an Extension Agreement with Teamsters Local 117, representing Bus Drivers and Parking Service Revenue Representatives.**

Request document: Commission agenda [memorandum](#) dated November 19, 2008 from Gary Schmitt, Director, Labor Relations

- e. Request for authorization to execute an Extension Agreement with Teamsters Local 117, representing Police Specialists.**

Request document: Commission agenda [memorandum](#) dated November 19, 2008 from Gary Schmitt, Director, Labor Relations

- f. Request for authorization to execute an Extension Agreement with Teamsters Local 117, representing Police and Fire Communication Specialists**

Request document: Commission agenda [memorandum](#) dated November 19, 2008 from Gary Schmitt, Director, Labor Relations

Motion for approval of Unanimous Consent Items 5a – 5f – Bryant

Motion carried by the following vote:

In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)

Policy and Staff Briefing Item 6c was advanced on the agenda as follows:

6. POLICY AND STAFF BRIEFINGS

c. (01:19:48 – Audio, part 1) Terminal 30 and Terminal 91 Project Update

Presentation documents: Commission agenda [memorandum](#) dated November 25, 2008 and computer slide presentation from Fred Chou, Capital Construction Project Manager and Ticson Mach, Capital Construction Project Manager

Presenters: Mr. Chou and Mr. Mach

A slide [presentation](#) was presented showing photos of current progress made at the T30/91 project since the previous presentation. Staff also commented on what they believe to be the major risk factors in completing the project on time and on budget.

Public comment regarding item 6c was received from the following individual:

- Fred Felleman, Friends of the Earth

Commissioner Davis stated that the Art Oversight Committee was looking at art options for the T91 Cruise Terminal, and would welcome ideas from the other commissioners.

Marine Item 7a was advanced on the agenda as follows:

7. MARINE ITEMS

a. (01:34:54 – Audio, part 1) Request for authorization of an additional \$350,000 to increase current budgets for existing expense projects for continuation of contingency plan on cranes at Terminal 46.

Request document: Commission agenda [memorandum](#) dated November 19, 2008 from Michael Burke, Director, Seaport Cargo Operations and Anne Porter, Seaport Capital Construction Project Manager

Presenters: Mr. Burke and Ms. Porter

A five-minute recess was called, and the meeting was reconvened to open public session at 3:40 p.m.

New Business was advanced on the agenda as follows:

12. NEW BUSINESS

(00:00:22 – Audio, part 2) Public Comment was received from the following individuals regarding the Matson ship currently moored at Pier 66 and the impacts to Anthony's Restaurant.

- Jeff Arnot, COO, Anthony's Restaurants
- David Herrilds, G.M., Anthony's Pier 66 and Bell Street Diner

CEO Yoshitani suggested that background information be provided to the Commission regarding the options staff has looked at regarding mooring ships at Pier 66.

Commissioner Davis stated that she would also be interested in seeing what other options might be available for next year.

6. POLICY AND STAFF BRIEFINGS

b. (00:09:37 – Audio, part 2) Alaskan Way Viaduct/Seawall Replacement Project: Central Waterfront Collaborative Process – Scenario Analysis

Presentation documents: Commission agenda [memorandum](#) dated November 21, 2008 from Kurt Beckett, Director, External Affairs and Geri Poor, Regional Transportation Manager. Also provided was a joint computer slide [presentation](#) from Port staff and external agencies noted below.

Presenters: Geri Poor; Bob Powers, City of Seattle; Ron Posthuma, King County; and Ron Paananen, Washington State Department of Transportation

Major topics reviewed:

- Where have we been – Port policy input
- Port Participation at this point
- Port Project Needs
- Timeline of where we are going
- Eight Current Viaduct Scenarios
- Guiding Principles of Viaduct Replacement Project
 - Improve Public Safety
 - Provide Efficient Movement of People and Goods Now and in the Future
 - Maintain or Improve Downtown Seattle, Regional, the Port and State Economies
 - Enhance Seattle's Waterfront, Downtown and Adjacent Neighborhoods as a Place for People
 - Create Solutions that are Fiscally Responsible
 - Improve the Health of the Environment
- Next Steps

During the presentation, there were Commission questions and discussion regarding areas of concern, which included maintaining freight capacity between Duwamish and

Interbay; the parking disruption that will occur during the project; and mitigating impacts to Port tenants.

Following the presentation, it was clarified that a final letter from the Port summarizing the thoughts of the Commission would need to be submitted before December 18 in order to fit into the scheduled timeline of deciding on the final replacement option.

7. MARINE ITEMS

- b. (01:35:22 – Audio, part 2) *ITEM DEFERRED*** Request for authorization to spend reserve funds in the amount of \$10,396,000 for the environmental remediation program for Seaport, Real Estate and Airport for 2009.

8. AVIATION ITEMS

None.

9. CAPITAL DEVELOPMENT

None.

10. REAL ESTATE

None.

11. GENERAL BUSINESS

- a. (01:35:32 – Audio, part 2) Resolution No. [3609](#), First Reading. 2009 Salary and Benefit Resolution**

Request document: Commission agenda [memorandum](#) dated December 5, 2008 from David Henderson, Total Compensation Manager

Presenters: Mr. Henderson and Tammy Woodard, Compensation Manager

Mr. Henderson stated that in response to the deferral of this item at the previous meeting, staff had revised the current request for First Reading in accordance with questions posed by the Commission at the earlier meeting. He also clarified that an amended Exhibit 'A' to the resolution, would be provided prior to Second Reading and Final Passage, reflecting changes for Police and Fire Chiefs; Assistant and Deputy Chiefs; and Interns.

Commissioner Bryant stated that although he would vote in favor of the First Reading, prior to Second Reading and Final Passage, he would appreciate receiving information on the desirability of moving the date of the propose plan from January, 2009 to June, 2009.

Motion for approval of First Reading of Resolution No. 3609 – Davis

Motion carried by the following vote:

In Favor: Bryant, Creighton, Davis, Hara, Tarleton (5)

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 5:33 p.m.

(A digital recording of the meeting is available (in two parts) on the Port's website.)

Bill Bryant
Secretary